

## **REMARKS**

Applicant has carefully considered the Examiner's comments in the Final Office Action dated March 17, 2006. Claims 1-22 are pending in the application, of which Claims 1-22 stand rejected. The Final Office Action indicated that the Information Disclosure Statement submitted by Applicant was considered. The Examiner is respectfully requested to reconsider novel claims 1-22.

### **The §102(b) Claim Rejections:**

The Examiner rejected claims 1-3, 5-11, 13-18 and 20-22 under 35 U.S.C. §102(b) as anticipated by Hestehave et al. (U.S. Patent No. 5,118,014).

The Applicant respectfully traverses the Examiner's rejection of claims 1-3, 5-11, 13-18 and 20-22. With respect to the Hestehave reference, the Examiner states "... the second side of the release lever is generally fork-shaped or substantially crescent-shaped (see figs. 5 and 6) having two arms." However, while it may be true that Hestehave discloses a spill-proof mug having a pair of valves on opposite sides of the handle forming a "T" that also may necessarily operationally interfere with a user's facial features when sipping or drinking from the mug when raised to the user's face, it fails to teach or suggest each and every element required by the claims.

Further, regarding the Hestehave reference, the Examiner states "[T]he spring is integral with the cap 10 and the release lever 20 (examiner notes that 'integral' meant 'formed as an unit with another part' or composed of integral parts in the Merriam Webster's Collegiate Dictionary)." While the Applicant disagrees with the Examiner's definition, the Applicant agrees with the Examiner's statement on page 3 of the Final Office Action, "Hestehave does not disclose the release lever being 'one-piece form'." As clearly indicated within the claims and believed to be understood by the Examiner, the word "integral" is intended to mean that the attribute is part of the specified element, i.e., the release lever in claim 9 or the cap in claim 16. Accordingly, the Hestehave reference fails to teach or suggest each and every element required by the claims.

**Claim 1:**

Claim 1 is novel and non-obvious over the Hestehave reference. Claim 1 requires a release lever having a first side, i.e., for engaging a user's thumb, and a second side for sealing and unsealing openings about a pivot point wherein the second side is fork-shaped. While the Hestehave reference shows a release lever having a first side and a second side, the Hestehave reference fails to teach or suggest a release lever wherein the second side of the release lever is fork-shaped. Instead, the second side of the release lever in the Hestehave reference is T-shaped and thus can interfere with a user's facial features while drinking. Accordingly, the Hestehave reference fails to teach or suggest a release lever as required by the claims.

It is therefore submitted that claim 1 is allowable over the art and that claims 2 through 8, which depend from claim 1, are allowable for the same reasons provided above in connection with claim 1.

**Claim 9:**

Claim 9 is novel and non-obvious over the Hestehave reference. Claim 9 requires a cap and a release lever having an integrally formed spring for resiliently engaging the cap. Conversely, the Hestehave reference fails to teach or suggest a release lever having an integrally formed spring. Moreover, the Hestehave reference fails to teach or suggest that the integrally formed spring resiliently engages the cap. Instead, any resiliency disclosed in the Hestehave reference is provided by a separate and discrete spring. This is disadvantageous because it requires multiple components that must be disassembled and then reassembled for each cleaning. This creates the undesirable risk of loss of the spring and therefore inoperability of the device. Accordingly, the Hestehave reference fails to teach or suggest a release lever as required by the claims.

It is therefore submitted that claim 9 is allowable over the art and that claims 10 through 15, which depend from claim 9, are allowable for the same reasons provided above in connection with claim 9.

**Claim 16:**

Claim 16 is novel and non-obvious over the Hestehave reference. Claim 16 requires a release lever and a cap having an integrally formed spring for resiliently engaging the release lever. Similarly, the Hestehave reference fails to teach or suggest a cap having an integrally formed spring. Moreover, the Hestehave reference fails to teach or suggest that the integrally formed spring resiliently engages the release lever. This is a significant disadvantage for at least the reasons provided above. Accordingly, the Hestehave reference fails to teach or suggest a cap as required by the claims.

It is therefore submitted that claim 16 is allowable over the art and that claims 17 through 22, which depend from claim 16, are allowable for the same reasons provided above in connection with claim 16.

**The §103(a) Rejections:**

The Examiner rejected claims 1-3, 5-11, 13-18 and 20-22 under 35 U.S.C. §103(a) as being obvious over Hestehave. The Applicant is unsure as to how claims 1-3 and 5-8 are applicable give the stated reasons for rejection. Accordingly, the rejection is traversed.

As mentioned above, the Applicant agrees with the Examiner that Hestehave does not disclose the release lever being one-piece form with a spring and a thumb pad. The Applicant, however, disagrees that forming a one piece of article which had previously been formed in two separate pieces involves only routine skill in the art. In *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893), the U.S. Supreme Court stated that “[I]t involves *no invention* to cast in one piece an article which has formerly been cast in two pieces, and put together.” However, the Applicant believes the Examiner has over read what the Court has indicated. In *Howard*, there was no invention, i.e. it was obvious, when an item was cast from a single cast iron piece when it was previously cast from two cast iron pieces resulting in the same function that was well understood in the art. However, the Court did not say that it only involved routine skill in the art. Moreover, the Court did not say that there is no invention when two different articles having

different results or functions are brought together to obtain beneficial or enhanced results that otherwise would not have been obvious or anticipated, especially when a particular piece of article having one function is combined with another article having a different function to obtain an improved or unexpected result. Also, the determination of obviousness is set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

Specifically, claim 9 is non-obvious because it requires a release lever having the integral spring for resiliently engaging the cap to which the release lever is attached. The Hestehave reference fails to teach or suggest the release lever having the integral spring for resiliently engaging the cap to which the release lever is attached. Moreover, the Examiner has failed to show how the Hestehave reference suggests the elements as required by the claims.

Also, claim 16 is non-obvious because it requires a cap having the integral spring for resiliently engaging the release lever attached thereto. The Hestehave reference fails to teach or suggest the cap having the integral spring for resiliently engaging the release lever attached thereto. Moreover, the Examiner has failed to show how the Hestehave reference suggests the elements as required by the claims.

Applicant therefore submits that without using the claimed invention as a template for modifying the prior art, the Hestehave reference cannot support the obviousness rejections. *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577 (Fed. Cir. 1984) (“It is impermissible to use the patent itself as the source of suggestion.”); *Ex Parte Levengood*, 28 USPQ2d 1300-1301, 1302 (BPAI 1993) (“That which is within the capabilities of one skilled in the art is not synonymous with obviousness.”). Accordingly, it is respectfully submitted that independent claims 9 and 16 are non-obvious over the prior art.

The Examiner also rejected claims 4, 12 and 19 under 35 U.S.C. §103(a) as obvious over Hestehave in view of Eger et al. (U.S. Patent No. 5,222,623).

In view of independent claims 1, 9 and 16 from which claims 4, 12 and 19 depend, respectively, the references made of record fail to teach or suggest each and every element required by claims.

It is therefore submitted that claims 1 through 22 are allowable over the art of record.

**Conclusion:**

It is respectfully submitted that all objections and rejections of record have been overcome and that all pending claims are in condition for allowance. A notice of allowance is therefore earnestly solicited.

If the Examiner should have any questions, he is urged to contact the undersigned.

Respectfully submitted,

**ARTZ & ARTZ P.C.**



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